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(February 12, 2001)

more objective standards and procedures for considering and applying reductions of fee or other amounts payable for contractor performance failures relating to environment, safety, and health (ES&H).

Some of the background for the proposed rule originates from Section 3147 of the National Defense Authorization Act for Fiscal Year 2000 (42 U.S.C. 2282b). The Act requires DOE to include a clause in its contracts that provides for reduction in the fees or amounts paid if the contractor or any of its employees violate any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information. The statute also prescribes that the clause must specify various degrees of violations and the amount of the reduction attributable to each degree of violation.

Additionally, due to the potentially serious consequences that could result from performance failures relating to the Department's ES&H and safeguards and security programs, a major provision of a recent Departmental initiative was to establish more definitive objective standards and procedures for applying fee reductions for contractor failures relating to ES&H and the safeguarding of Restricted Data and classified information.

In light of the foregoing, the Department is proposing to amend the DEAR to implement the new statutory requirements and the Departmental initiative. The proposed amendments would apply to all DOE contracts and would be accomplished by use of one of two clauses.

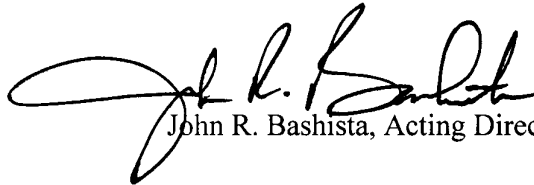
The first clause is a new clause entitled, "Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information." It would be prescribed for use in all DOE contracts that involve classified information, except DOE management and operating contracts and other contracts designated by the Procurement Executive, or designee. The clause would provide for reductions of earned fee or profit that is otherwise payable for contractor violations of laws, regulations, or directives relating to the safeguarding of Restricted Data and other classified information. As proposed, the clause sets forth the conditions that may precipitate a reduction of fee or profit, percentage reduction ranges that correlate to three degrees of violations relating to the safeguarding of Restricted Data or other classified information, and the methodology to be used in determining the amount of earned fee or profit that will be subject to reduction under the clause.

The second clause would be included in management and operating contracts and other contracts designated by the Procurement Executive, or designee. The current clause "Conditional payment of fee, profit, or incentives" would be amended and renamed "Conditional Payment of Fee,

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Profit, or Other Incentives – Facility Management Contracts.” The amended clause would provide for reductions of earned fee, fixed fee, profit, or share of cost savings that may otherwise be payable under the contract: for performance failures relating to ES&H; and, for contracts that involve or are likely to involve classified information, for contractor violations of laws, regulations, or DOE directives relating to the safeguarding of Restricted Data and other classified information. As proposed, the clause sets forth: the conditions that could precipitate a reduction of earned or fixed fee, profit, or share of cost savings under the contract; percentage fee, profit, or share of cost savings reduction ranges that correlate to three degrees of performance failures relating to ES&H and to the safeguarding of Restricted Data and other classified information; and the methodology to use to determine the amount of earned or fixed fee, profit, or share of cost savings that will be subject to reduction under the clause.

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cc: PPAG Members